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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,225	12/20/2001	Monica A. McClintic	5038US (01-01-058)	3449
4743	7590	03/09/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			NGUYEN, KIM T	
			ART UNIT	PAPER NUMBER
			3713	7
DATE MAILED: 03/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/029,225	MCCLINTIC ET AL.
Examiner	Art Unit	
Kim Nguyen	3713	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-115 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 1-115 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1: specification, paragraph 0045 (claims 2-3, 12, 21, 38-39, 49, 73-74, 83, 95-96 and 106) drawn to hammer strike game.

Species 2: specification, paragraph 0046 (claims 4-5, 13, 22, 40-41, 50, 75-76, 84, 97-98 and 107) drawn to arm wrestling game.

Species 3: specification, paragraph 0047 (claims 6-7, 14, 23, 42-43, 51, 77-78, 85, 99-100 and 108) drawn to shooting game.

Species 4: specification, paragraph 0048 (claims 8-9, 15, 24, 44-45, 52, 79-80, 86, 101-102 and 109) drawn to ball rolling game.

Species 5: specification, paragraph 0050 (claims 25, 46, 53, 103 and 110) drawn to prediction game.

Species 6: specification, paragraph 0069 (claims 26 and 56) drawn to racing game.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally

held to be allowable. Currently, claims 1, 10-11, 16-20, 27-37, 47-48, 54-55, 57-72, 81-82, 87-94, 104-105, and 111-115 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (703) 308-7915. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg, can be reached on (703) 308-1327. The central official fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.



Kim Nguyen  
Primary Examiner  
Art Unit 3713

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Date: March 5, 2004